

Prepared and submitted by:

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Attorneys for Plaintiff/Counter Defendant
 PMA MEDIA GROUP, INC.

and

Third-Party Defendant
 STEPHEN SCANLON

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PMA MEDIA GROUP, INC. , a Utah
 Corporation,

Plaintiff,

vs.

RAPID RESPONSE MARKETING, LLC, a
 Nevada Limited Liability Company, KEVIN
 DE VINCENZI, an individual; DOES I
 through X; and ROE CORPORATIONS XI
 through XX,

Defendants.

CASE NO.: 2:10-cv-0058-JCM-RJJ

STIPULATED PROTECTIVE ORDER

RAPID RESPONSE MARKETING, LLC, a
 Nevada limited liability company,

Counter-Claimant and
 Third-Party Plaintiff,

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and
 KEVIN DE VINCENZI, an individual,
 Counter-Claimant,
 v.
 PMA MEDIA GROUP, INC., a Utah
 corporation,
 Counter-Defendant,
 and
 STEPHEN SCANLON, an individual,
 Third-Party Defendant.

Pursuant to Fed. R. Civ. P. 26(c), Plaintiff/Counter Defendant, PMA MEDIA GROUP, INC.; Defendant/Counter-Claimant/Third-Party Plaintiff, RAPID RESPONSE MARKETING, LLC; Defendant/Counter-Claimant, KEVIN DE VINCENZI; and Third-Party Defendant, STEPHEN SCANLON, (collectively the "Parties") hereby submit this proposed Stipulated Protective Order (the "Order") for the purpose of ensuring that the confidential and private information of the Parties is not disclosed by any party or third party in connection with this action, whether pursuant to compulsory process or voluntarily. Accordingly, the Parties, by their undersigned counsel, hereby stipulate as follows:

A. Definitions and Terms

As used in this Order, the following definitions and terms shall apply:

1. "Confidential Information" means any information that a designating party reasonably believes not to be in the public domain and reasonably believes contains any private financial or other confidential and/or sensitive information that, if disclosed, would materially affect the designating party's personal, business, commercial, or financial interests.

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2. “Highly Confidential—Attorneys’ Eyes Only Information” means any extremely sensitive Confidential Information, the disclosure of which to another party or non-party would create a substantial risk of serious injury to a designating party or a designating party’s personal, business, commercial or financial interests.

3. “Parties” or “Party” mean(s) PMA Media Group, Inc., Rapid Response Marketing LLC., Kevin De Vincenzi, and Stephen Scanlon, and all their affiliates, partners, and joint ventures, as well as all present and former officers, members, managers, employees, agents, partners, representatives, and attorneys.

4. “Designating Party” means any Party or Protected Person that has designated a particular item of information as “Confidential Information” or “Highly Confidential—Attorneys’ Eyes Only Information” under the terms of this Order.

5. “Counsel” means the counsel of record in this action and their law firms as well as (i) other attorneys or consultants employed or retained by such law firms; or (ii) any attorney subsequently retained or designated by any party to appear in this action.

6. “Protected Person” means any non-party that furnishes any information to any party, whether voluntarily or otherwise.

B. Types of Material That May Be Designated Confidential

Any information may be designated as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information under the terms of this Order. Such designation may be made by any Party or Protected Party, regardless of whether the Designating Party is the Party producing such information. Such designation shall constitute a representation to the Court that Counsel for the Designating Party believe in good faith that the material so designated constitutes Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information, as those terms are defined by this Order.

C. Designation of Information as Confidential

1. Any documents, written materials, or electronically stored information produced in this action may be designated by the producing party (whether a Party or Protected Person) as Confidential Information or Highly Confidential—Attorneys’ Eyes

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1 Only Information by producing copies of the documents, material, or information stamped
2 with the legends "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
3 ONLY," as appropriate. These legends shall be affixed to each page of the documents or
4 materials containing such Confidential Information or Highly Confidential—Attorneys'
5 Eyes Only Information and shall not interfere with the legibility of designated documents
6 or materials. Alternatively, with respect to electronically stored information, the producing
7 party (whether a Party or Protected Person) may specify in a separate written notice that
8 such information is designated as Confidential Information or Highly Confidential—
9 Attorneys' Eyes Only Information.

10 2. A Party or Protected Person that makes original documents, materials, or
11 electronically stored information available for inspection need not designate them for
12 protection until after the inspecting Party has indicated which documents, materials, or
13 electronically stored information it would like copied and produced. During the inspection
14 and before the designation, all of the documents, materials, or electronically stored
15 information made available for inspection shall be deemed Highly Confidential—
16 Attorneys' Eyes Only Information. After the inspecting Party has identified the
17 documents, materials, or electronically stored information that it wants copied and
18 produced, the producing party (whether a Party or Protected Person) must determine
19 which documents, materials, or electronically stored information, or portions thereof,
20 qualify for protection under this Order, and, before producing the specified documents,
21 materials, or electronically stored information, affix the appropriate legend.

22 3. If any documents, written materials, or electronically stored information
23 qualifying for protection under this Order are produced by any Party or Protected Person
24 without designation as Confidential Information or Highly Confidential—Attorneys' Eyes
25 Only Information, a non-producing Party may designate such documents, materials, or
26 information as Confidential Information or Highly Confidential—Attorneys' Eyes Only
27 Information by providing a separate written notice to Counsel for each Party receiving
28

1 such documents, materials, or information within ten (10) business days of receipt of
2 notice of the production.

3 4. Failure to designate any documents, materials, or information as
4 Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information shall
5 not be deemed a waiver of the producing party’s (whether a Party or Protected Person)
6 claim of confidentiality as to such documents, materials, or information, and the
7 producing party (whether a Party or Protected Person) may thereafter designate such
8 documents, materials, or information as Confidential Information or Highly Confidential—
9 Attorneys’ Eyes Only Information by providing a separate written notice to Counsel for
10 each Party receiving such documents, materials, or information within ten (10) business
11 days of discovering any such failure to designate.

12 **D. Challenges to Confidential Designations**

13 1. If any Party disagrees with a confidential designation by a Designating
14 Party, the parties to the dispute shall attempt first to resolve the dispute on an informal
15 basis before presenting the dispute to the Court. All items for which a confidential
16 designation is challenged shall continue to be treated as confidential pending resolution
17 of the parties’ dispute. If the dispute cannot be resolved informally, the Designating Party
18 bears the burden of persuading the Court that the information is Confidential Information
19 or Highly Confidential—Attorneys’ Eyes Only Information within the definition of those
20 terms set forth above. In the case of a designation by a Protected Person, the Party
21 contesting the confidential designation shall provide reasonable notice to the Protected
22 Person that the matter has been referred to the Court.

23 2. Entering into, agreeing to, or complying with the terms of this Order shall
24 not: (a) operate as an admission by any Party or Protected Person that any particular
25 documents, materials, or electronically stored information contain or reflect currently
26 valuable trade secrets or proprietary or commercial information; or (b) prejudice in any
27 way the right of a Party at any time: (i) to seek a determination by the Court of whether
28 any particular documents, materials, or electronically stored information should be

1 subject to the terms of this Order; (ii) to seek relief on appropriate notice from any
2 provision(s) of this Order, either generally or as to any particular documents, materials, or
3 electronically stored information; (iii) to object to any discovery request, including the right
4 to assert that no discovery should be had of certain documents or information; or (iv) to
5 seek documents or other information from any source.

6 **E. Deposition Procedures**

7 1. At any deposition, if a Party or Protected Person reasonably believes that
8 the answer to a question will result in the disclosure of Confidential Information or Highly
9 Confidential—Attorneys' Eyes Only Information, the Party or Protected Person shall have
10 the option to request that all persons, other than the reporter, Counsel, and individuals
11 specified in Paragraphs D.5 and D.6, above, leave the deposition room during the
12 confidential portion of the deposition. The failure of such other persons to comply with
13 such request shall constitute substantial justification for counsel to advise the witness that
14 he or she need not answer the question.

15 2. Any Party may designate a deposition or hearing transcript (or any portion
16 thereof or exhibit thereto) as Confidential or Highly Confidential – Attorneys' Eyes Only
17 by: (i) making such designation on the record during the deposition or hearing (in which
18 case the court reporter shall affix the appropriate legend to the cover page and all
19 designated pages of the transcript and all copies thereof); or (ii) informing Counsel for all
20 other Parties of such designation in writing within seven (7) days after receipt of the
21 transcript (in which case any Party in possession of an original or copy of the transcript
22 shall affix the appropriate legend to the cover page and all designated pages and
23 exhibits).

24 **F. Filing Under Seal**

25 1. Any pleading, motion, exhibit, or other paper filed with the Court that
26 contains, discusses, or otherwise discloses Confidential Information or Highly
27 Confidential—Attorneys' Eyes Only Information shall be filed under seal. Where
28

possible, only confidential portions of filings shall be filed under seal. The Parties further agree to abide by the terms of any separately entered sealing order.

G. Use of Confidential Information at any Hearing or Trial

1. The Parties shall confer and attempt to agree, before any hearing or trial, on the procedures under which Confidential Information or Highly Confidential—Attorneys' Eyes Only Information may be introduced into evidence or otherwise be used at any hearing or at trial. Upon reaching agreement, the Parties shall give notice of the terms of such agreement to each Protected Person that produced any documents, materials, or electronically stored information designated as Confidential Information or Highly Confidential—Attorneys' Eyes Only Information if any such information may be used or introduced at any such hearing or at trial. Absent agreement, the Court shall be asked to issue an order governing the use of such Confidential Information or Highly Confidential—Attorneys' Eyes Only Information at any such hearing or at trial upon reasonable notice to all Parties and Protected Persons who have produced such information.

H. Procedures Upon Termination of Action

1. The termination of proceedings in the action shall not relieve any of the Parties from the obligation of maintaining the confidentiality of all Confidential Information and Highly Confidential—Attorneys' Eyes Only Information unless all of the Parties to the action agree otherwise. The Court shall retain jurisdiction to resolve any dispute concerning the use of information disclosed hereunder.

2. Within sixty (60) business days following the running of any applicable time to appeal any final order or ruling entered in this action, or within sixty (60) business days after all rights of appeal have been exhausted, the Parties shall, at their election, either (i) return to the Party or Protected Person who produced documents, materials, or electronically stored information designated as Confidential Information or Highly Confidential—Attorneys' Eyes Only Information all copies of such documents, materials, or electronically stored information so designated, or (ii) certify to the Party or Protected

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1 Person who produced documents, materials, or electronically stored information
2 designated as Confidential Information or Highly Confidential—Attorneys’ Eyes Only
3 Information that all such materials have been destroyed.

4 3. Nothing in this Order shall require any Party, person, or entity to return or
5 destroy electronically stored information from sources that are not reasonably accessible
6 because of undue burden or cost. Any electronically stored information that has been
7 designated as Confidential Information or Highly Confidential—Attorneys’ Eyes Only
8 Information or that has been created or derived from other sources designated as
9 Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information shall
10 remain confidential and subject to this Order to the extent it is not reasonably accessible
11 because of undue burden or cost.

12 **I. Non-Waiver of Privilege**

13 1. If information subject to a claim of attorney-client privilege or work product
14 protection is inadvertently produced, such production shall in no way prejudice or
15 otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work-product
16 protection for such information. If a Party has inadvertently produced information subject
17 to a claim of privilege or protection, upon written request made by the producing Party
18 within ten (10) business days of discovery of such inadvertent production, the information
19 for which a claim of inadvertent production is made, including all copies, shall be returned
20 within seven (7) business days of such request unless the receiving Party intends to
21 challenge the producing Party’s assertion of privilege or protection. All copies of
22 inadvertently produced documents shall be destroyed, and any document or material
23 information reflecting the contents of the inadvertently produced information shall be
24 expunged. If a receiving Party objects to the return of such information within the seven
25 (7) business day period described above, the producing Party may move the Court for an
26 order compelling the return of such information. Pending the ruling, a receiving Party
27 may retain the inadvertently produced Documents in a sealed envelope and shall not
28 make any use of such information.

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J. Inadvertent Disclosure of Confidential Information

1. The inadvertent production or disclosure of Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information by a producing Party shall not constitute a waiver of any claim of confidentiality where (a) the producing Party notifies the receiving Party in writing of such inadvertent disclosure within ten (10) business days of becoming aware of such disclosure, and (b) within thirty (30) days of such notice, the producing Party provides properly re-designated documents to the receiving Party. During the thirty (30) day period after notice, the materials shall be treated as designated in the producing Party’s notice. Upon receipt of properly re-designated documents, the receiving Party shall return all unmarked or incorrectly designated documents to the producing Party within five (5) business days. All Parties, however, reserve all rights to challenge the confidential status of such inadvertent production or disclosure.

Upon learning that Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information has been inadvertently disclosed by a receiving Party to any person not authorized to receive them by this Order, the receiving Party shall: (a) immediately notify the Designating Party; (b) use its best efforts to obtain the return of any such documents or information and to bind such person to the terms of this Order; (c) within seven (7) business days of the discovery of such disclosure, inform such person of all provisions of this Order and identify such person to the Designating Party; and (d) request such person to sign the certification attached hereto as Exhibit A. The executed certification shall be served upon Counsel for the Designating Party within ten (10) business days of its execution by the person to whom the Confidential Documents or Information was inadvertently disclosed. Nothing in this Paragraph is intended to limit the remedies that the Designating Party may pursue for breach of this Discovery Order.

K. Subpoena of Confidential Document or Confidential Information. If at any time any Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information is subpoenaed, or otherwise requested by any other person or entity purporting to have authority to require the production of any such information, the Party to

1 whom the subpoena or other request is directed shall give written notice within three (3)
2 business days thereof to the Designating Party and shall make no disclosure unless
3 seven (7) court days have elapsed from the date on which written notice was given
4 without objection by the Designating Party or unless the Designating Party has consented
5 in writing.

6 **L. Miscellaneous**

7 1. This Order shall not affect the right of any Party or Protected Person to
8 oppose production of Discovery Material on any ground permitted by the Federal Rules of
9 Civil Procedure or the Federal Rules of Evidence, including any applicable privileges,
10 protections, or immunities. Moreover, this Order shall not affect the scope of discovery
11 by any Party that is not otherwise proper under the Federal Rules of Civil Procedure.

12 2. Nothing in this Order shall prejudice the right of any Party or Protected
13 Person to move the Court to broaden or restrict the rights of access to and use of
14 particular Discovery Material, or to seek modifications of this Order upon due notice to all
15 other parties and affected Protected Persons.

16 3. All persons governed by this Order, by reviewing Confidential Information or
17 Highly Confidential—Attorneys' Eyes Only Information or seeking the protections of this
18 Order for Discovery Material, shall agree to the jurisdiction of this Court over their person
19 for the purpose of any action seeking to enforce the terms and conditions of this Order, or
20 for any action for contempt for violation of the terms of this Order.

21 **M. Permissible Uses of Information**

22 1. All persons obtaining access to information produced in connection with this
23 action shall use such information only for purposes of this action and shall not use such
24 information for any other purpose, including the furtherance of that person's business
25 interests or in any administrative or judicial proceeding.

26 2. Information designated as Confidential Information or Highly Confidential—
27 Attorneys' Eyes Only Information must be stored and maintained by all Parties in receipt
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1 of such designated materials in a manner that ensures that access is limited to the
2 persons authorized under this Order.

3 3. Nothing herein shall prevent disclosure of Confidential Information or Highly
4 Confidential—Attorneys’ Eyes Only Information with the written consent of counsel for the
5 Designating Party.

6 4. Unless otherwise ordered by the Court or permitted in writing by Counsel
7 for the Designating Party, a Party in receipt of information designated as Confidential
8 Information may disclose such material only to:

9 (a) its Counsel in this action;
10 (b) the Court;
11 (c) personnel of any person within categories (a) and (b) for whom access to
12 Confidential Information is necessary to assist such persons in this action, including any
13 Court personnel, litigation assistants, paralegals, secretarial or other clerical personnel,
14 and stenographers or other persons involved in taking or transcribing testimony in this
15 action;

16 (d) its litigation support services, including outside copying services, retained
17 by a Party for the purpose of assisting that Party in this action; and

18 (e) its managers, members, officers, directors, and employees, provided such
19 persons have signed the “Agreement to Be Bound by Protective Order” (Exhibit A).

20 (f) independent contractors, experts, consultants, or advisors who are
21 employed or retained by, or on behalf of, any Party or Counsel to any Party to assist in
22 preparation for trial.

23 5. Unless otherwise ordered by the Court or permitted in writing by Counsel
24 for the Designating Party, a Party in receipt of information designated as Highly
25 Confidential—Attorneys’ Eyes Only Information may disclose such material only to:

26 (a) its Counsel in this Action;
27 (b) the Court; and
28

(c) personnel of any person within categories (a) and (b) for whom access to Highly Confidential—Attorneys' Eyes Only Information is necessary to assist such persons in this action, including any Court personnel, litigation assistants, paralegals, secretarial or other clerical personnel, and stenographers or other persons involved in taking or transcribing testimony in this action;

(d) independent contractors, experts, consultants, or advisors who are employed or retained by, or on behalf of, any Party or Counsel to any Party to assist in preparation for trial.

N. The Parties agree to be bound by the terms of this Stipulation pending entry of the Discovery Order by the Court.

Dated this 24TH day of AUG., 2010.

IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE
DATED: AUGUST 24, 2010

APPROVED AS TO FORM:

By: /s/ Joel Z. Schwarz
Bradley J. Richardson, Esq.
Joel Z. Schwarz, Esq.
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3960 Howard Hughes Parkway, Ninth Floor
Las Vegas, Nevada 89169-5978

By: /s/ Daniel Stewart
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AFFIDAVIT

COUNTY OF _____)

NOTARY PUBLIC

Residing at:

CLERK'S CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I hereby certify that on the ____ day of _____ 2010,
a true and correct copy of the foregoing **STIPULATED PROTECTIVE ORDER** was
served on the following in the manner set forth below:

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- ☐ Hand Delivery
- ☐ Facsimile Transmission
- ☒ U.S. Mail, Postage Prepaid
- ☐ Certified Mail, Receipt No. _____,
return receipt requested

Clerk of the Court

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